

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1072

Introduced by Assembly Member Daly

February 27, 2015

An act to add and repeal ~~Section~~ *Sections* 11401.5 ~~of and~~ 11401.6 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1072, as amended, Daly. Insurance: firefighters' or police officers' benefit and relief associations.

Existing law generally provides for the regulation of insurers by the Department of Insurance pursuant to laws set forth in the Insurance Code. Existing law authorizes the Insurance Commissioner to make certain examinations, investigations, and prosecutions and, upon making a determination of the existence of certain conduct, conditions, or grounds, to issue orders reasonably necessary to correct, eliminate, or remedy the conduct, conditions, or grounds.

Existing law exempts from the requirements set forth in the Insurance Code firemen's, policemen's, and peace officers' benefit and relief associations that comply with specified criteria, including, among other things, a requirement that the membership consist solely of peace officers, members of police or fire departments, and emergency medical personnel employed by fire departments, as specified. Existing law

prohibits an association from operating or doing business in the state without a certificate of authority.

This bill would require every association that holds a certificate of authority and that issues long-term disability or long-term care policies or contracts, as specified, to submit to the commissioner the opinion, as specified, of a qualified actuary as to whether the reserves and related actuarial items that support the policies or contracts issued are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and are based on specified actuarial standards and procedures. The bill would also require an association seeking a certificate of authority to file an opinion that meets specified requirements and that establishes that it would have adequate resources to provide benefits, as specified, as required to satisfy its proposed contractual obligations. *The bill would recognize that information submitted by a company pursuant to those provisions and in the possession or control of the department as confidential and privileged, exempt from disclosure pursuant to the California Public Records Act, and not subject to subpoena or discovery or admissible in evidence in a private civil action.* The bill would require the commissioner to notify the association of the deficiencies in the filing if the association fails to provide an opinion and supporting memoranda to the commissioner that meets the requirements of the bill, as specified. The bill would require an association that receives that notice to, ~~commencing 30 days from the notification date,~~ *self-funds all or part of the benefits to include specified disclosure language in all contracts that are not regulated by the department and in certificates evidencing coverage under those contracts.* The bill would also require the commissioner, if he or she determines that the laws governing these associations are inadequate to protect the interests of the members of the associations, to develop and deliver recommendations to the Assembly Committee on Insurance and the Senate Committee on Insurance regarding changes in the law that would better protect the interests of members of the associations. The provisions of the bill would remain in effect only until December 31, 2018, and as of that date would be repealed.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11401.5 is added to the Insurance Code,
2 to read:
3 11401.5. (a) (1) Each association that holds a certificate of
4 authority pursuant to this chapter and that issues long-term
5 disability or long-term care policies or contracts shall submit to
6 the commissioner the opinion of a qualified actuary as to whether
7 the reserves and related actuarial items that support the policies
8 or contracts issued pursuant to this chapter, including policies and
9 contracts issued by entities established by these associations that
10 provide benefits described in this chapter, are based on assumptions
11 that satisfy contractual provisions, are consistent with prior reported
12 amounts, and are based on actuarial standards and procedures
13 established by the American Academy of Actuaries and the
14 Actuarial Standards Board. An association that holds a certificate
15 of authority pursuant to this chapter shall file its opinion no later
16 than July 1, 2016. The opinion shall have been completed no earlier
17 than December 31, 2013.
18 (2) An association is considered to have issued a long-term care
19 or disability policy or contract if it self-funds all or part of the
20 resulting obligation. An association that markets long-term policies
21 or contracts issued by an insurer that is admitted by the department
22 to offer insurance products in the state is exempt from this reporting
23 requirement.
24 (3) An association seeking a certificate of authority pursuant to
25 this chapter shall file an opinion, to the extent feasible, that
26 establishes that it would have adequate resources to provide
27 benefits described in this chapter as required to satisfy its proposed
28 contractual obligations.
29 (b) The opinion required by subdivision (a) shall include an
30 opinion with supporting memoranda consistent with the same
31 qualified actuary as to whether the reserves and related actuarial
32 items held in support of the policies and contracts, when considered
33 in light of the assets held by the association with respect to the
34 reserves and related actuarial items, including, but not limited to,
35 the investment earnings on the assets and the considerations

1 anticipated to be received and retained under the policies and
2 contracts, and shall make adequate provision for the association's
3 obligations under the policies and contracts, including, but not
4 limited to, the benefits under any expenses associated with the
5 policies and contracts.

6 (c) The opinion required by subdivision (b) shall be governed
7 by the following provisions:

8 (1) It shall include a memorandum, in form and substance
9 consistent with actuarial standards and procedures acceptable to
10 the American Academy of Actuaries and the Actuarial Standards
11 Board, in support of the opinion.

12 (2) If the association fails to provide an opinion and supporting
13 memoranda to the commissioner that meets the requirements of
14 this section, the commissioner shall notify the association of the
15 deficiencies in the filing, and shall make a specific request that
16 identifies the issues that should be addressed in an amended filing.

17 ~~(3) (A) An association that receives a notification from the~~
18 ~~commissioner pursuant to paragraph (2) shall not indicate in any~~
19 ~~form of communication that it is operating under the auspices of,~~
20 ~~or was established under, the authority of any provision of this~~
21 ~~code, the commissioner, or the department, and shall, commencing~~
22 ~~30 days from the date of the notification from the commissioner,~~
23 ~~include the following language in all contracts that are not regulated~~
24 ~~by the department, and in certificates evidencing coverage under~~
25 ~~those contracts, in capital letters and in a minimum of 12-point type:~~

26
27 ~~"THE BENEFITS PROVIDED BY THIS CONTRACT ARE~~
28 ~~NOT SUBJECT TO REGULATION BY THE CALIFORNIA~~
29 ~~DEPARTMENT OF INSURANCE, AND THE CONTRACT IS~~
30 ~~NOT GUARANTEED BY THE CALIFORNIA INSURANCE~~
31 ~~GUARANTEE ASSOCIATION."~~

32
33 ~~(B) The requirements of this paragraph shall continue until the~~
34 ~~association satisfies the requirements of this section.~~

35 (d) If the commissioner determines, after a review of the filings
36 from the associations, that the laws governing these associations
37 are inadequate to protect the interests of the members of the
38 associations, he or she ~~shall~~ *shall, on or before July 1, 2017,*
39 develop and deliver recommendations to the Assembly Committee
40 on Insurance and the Senate Committee on Insurance regarding

1 changes in the law that would better protect the interests of
2 members of the associations.

3 *(e) Documents, materials, or other information, including the*
4 *opinion with supporting memoranda, submitted pursuant to this*
5 *section that are in the possession or control of the Department of*
6 *Insurance and that are obtained by, created by, or disclosed to*
7 *the commissioner or any other person pursuant to this section, are*
8 *recognized by this state as being proprietary and to contain trade*
9 *secrets. Those documents, materials, or other information shall*
10 *be confidential by law and privileged, shall not be subject to*
11 *disclosure pursuant to the California Public Records Act (Chapter*
12 *3.5 (commencing with Section 6250) of Division 7 of Title 1 of the*
13 *Government Code), and shall not be subject to subpoena or*
14 *discovery, or admissible in evidence, in a private civil action. The*
15 *commissioner shall not otherwise make those documents, materials,*
16 *or other information public without the prior written consent of*
17 *the association.*

18 ~~(e)~~

19 *(f) This section shall remain in effect only until December 31,*
20 *2018, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before December 31, 2018, deletes or extends that*
22 *date.*

23 *SEC. 2. Section 11401.6 is added to the Insurance Code, to*
24 *read:*

25 *11401.6. (a) An association that self-funds all or part of the*
26 *benefits provided under this chapter shall include the following*
27 *language, or other language approved by the commissioner, in all*
28 *contracts that are not regulated by the department, and in*
29 *certificates evidencing coverage under those contracts, in capital*
30 *letters and in a minium of 12-point type:*

31
32 *“ALL OR A PORTION OF THE BENEFITS PROVIDED BY*
33 *THIS CONTRACT ARE NOT SUBJECT TO REGULATION BY*
34 *THE CALIFORNIA DEPARTMENT OF INSURANCE, AND THE*
35 *CONTRACT IS NOT GUARANTEED BY THE CALIFORNIA LIFE*
36 *AND HEALTH INSURANCE GUARANTEE ASSOCIATION.”*

37
38 *(b) This section shall remain in effect only until December 31,*
39 *2018, and as of that date is repealed, unless a later enacted statute,*

1 *that is enacted before December 31, 2018, deletes or extends that*
2 *date.*

3 *SEC. 3. The Legislature finds and declares that Section 1 of*
4 *this act, which adds Section 11401.5 of the Insurance Code,*
5 *imposes a limitation on the public's right of access to the meetings*
6 *of public bodies or the writings of public officials and agencies*
7 *within the meaning of Section 3 of Article I of the California*
8 *Constitution. Pursuant to that constitutional provision, the*
9 *Legislature makes the following findings to demonstrate the interest*
10 *protected by this limitation and the need for protecting that*
11 *interest:*

12 *In order to protect proprietary information, it is necessary to*
13 *enact legislation that limits the public's right of access to insurance*
14 *holding company information that is provided pursuant to Section*
15 *11401.5 of the Insurance Code.*